

The Federal Antitrust Case Against Amazon

AN EXPLAINER

By Stacy Mitchell and Ron Knox, September 2023

The Federal Trade Commission (FTC) has filed suit against Amazon for monopolizing e-commerce in violation of U.S. antitrust laws. This explainer looks at why the lawsuit was filed and what it seeks to accomplish. To read more about Amazon's dominance and its consequences, visit ilsr.org/amazon.



This lawsuit seeks to open the online market to competition.

→ **The goal of the FTC's case is to open the online market to much-needed competition, which would create major benefits for Americans.** More competition would lead to more choices, lower prices, greater innovation, and fairer terms for everyone — the consumers who shop online, the small businesses who sell online, and the workers who handle the orders.

→ **E-commerce should be a dynamic industry with many competing retail marketplaces.** Because of Amazon's anticompetitive tactics, e-commerce is utterly dominated by a single corporation. In two-thirds of major product categories, Amazon captures **more than 70 percent** of online transactions. Overall, Amazon accounts for **about half** of the online shopping market in the U.S. If it weren't for Amazon's stranglehold on e-commerce, there would be far more competition, with numerous marketplaces vying to serve sellers and consumers.

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Amazon's monopoly harms consumers, small businesses, and workers.

→ **Amazon has sharply degraded its shopping experience and inflated its prices.** In the absence of competition, Amazon is taking advantage of consumers. It's converted most of its search results pages to **paid product ads**. Shoppers have also been subjected to **confusing and useless** search results, **fake reviews**, and **fraudulent products**. Amazon's exorbitant seller fees have led to **inflated consumer prices**, both on Amazon and across the web. Surveys **show** customer satisfaction with Amazon has fallen sharply. Indeed, online shopping overall has stagnated: We've seen little in the way of innovation and Amazon's own site has remained largely unchanged for years.

→ **Amazon has exploited independent businesses and brands, including by imposing predatory fees that allow Amazon to pocket nearly half of their revenue.** Amazon's dominance allows it to function as a gatekeeper: retailers and brands must sell on its site to reach much of the online market. Amazon has exploited this position to bully and steal from these businesses, including by **imposing steep and rapidly rising fees** on every sale they make. Through these fees, Amazon is now taking a **45 percent cut** of sellers' revenue in the U.S., up from 19 percent in 2014. On top of this, Amazon's abrupt and opaque algorithm changes and suspensions can capsize a business overnight with no warning or recourse.

→ **Amazon has used its market power in e-commerce logistics to drive down wages and inflict dangerous conditions on workers.** Amazon has leveraged its monopoly over online selling to build a massive logistics and shipping operation. It's used its power as dominant buyer of labor in this sector to **drive down wages** and subject workers to unsafe conditions. Amazon workers face markedly **higher injury rates**. Labor standards have deteriorated as a result of Amazon's consolidation of the market and the lack of competing alternatives for workers.

→ **Amazon's stranglehold has weakened the U.S. economy.** By squeezing independent businesses and thwarting their ability to compete online, Amazon has impeded innovation, **weakened** entire industries, and drained many communities of their economic vitality. Amazon's outsized power is one of the **leading factors** contributing to a decline in small and medium businesses. Between 2007 and 2017, the number of independent retailers in the U.S. **fell by 65,000**, and about 40 percent of the nation's small apparel, toy, and sporting goods makers **disappeared**.



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The FTC's case targets the core strategies Amazon uses to block competition and preserve its control over e-commerce.

→ **The lawsuit alleges that Amazon uses its market power to lock businesses into its platform and hinder their ability to compete via other sites and marketplaces.** In a healthy, competitive market, Amazon's high fees and abusive policies would lead sellers to migrate to selling on their own web sites or other marketplaces. Indeed, most sellers, including both small businesses and major consumer brands, have tried to reduce their dependence on Amazon by selling through other online channels. But, as the FTC's

case details, Amazon has flexed its power over sellers to impede this strategy and ensure they can't grow their sales elsewhere.

→ **One way Amazon does this is by punishing sellers that offer lower prices on other sites.** Given Amazon's high fees, the obvious way for businesses to lure shoppers elsewhere is by offering lower prices on their own sites and other platforms. But Amazon retaliates against sellers who

attempt this. If Amazon’s pricing bots detect that a seller has a lower price elsewhere, Amazon **wipes out** the seller’s sales by demoting the item in search results or making the seller ineligible to win the **Buy Box**. Most sellers can’t risk this because Amazon accounts for 80-90 percent of their revenue. So they keep their prices inflated on other sites, even those that charge much lower selling fees. This shields Amazon from competition and preserves its dominance.

→ **Another way Amazon impedes sellers’ ability to grow their sales elsewhere is by compelling them to use its fulfillment service.** To qualify for Prime, sellers **must** use Amazon’s warehousing and shipping service (“Fulfillment By Amazon” or FBA). But using FBA hinders their ability to grow their sales on other sites, because FBA charges higher fees to ship non-Amazon orders and delivery times are slower. Amazon used to allow sellers to use a neutral logistics provider and still qualify for Prime (so long as they met the delivery speeds). But in 2019, Amazon **curtailed** “Seller Fulfilled Prime,” (SFP) because it recognized that sellers with an effective multi-channel fulfillment strategy threatened to erode its dominance in e-commerce. (Under scrutiny, Amazon recently reintroduced SFP, but tacked on additional fees that deter its use.)

→ **The FTC’s case echoes the conclusions of a Congressional investigation, a California lawsuit, and actions by other governments.** In 2020, the House Judiciary Committee **concluded**, after a bipartisan, 15-month investigation, that Amazon “has monopoly power over many small- and medium-sized businesses.” The committee recommended that Amazon be broken up and regulated. Amazon’s monopoly is also the subject of an antitrust case filed by the state of California and multiple cases brought by various European governments



Breaking Amazon up into multiple companies is the right solution.

→ **Spinning off Amazon’s major divisions into stand-alone companies would neutralize the tactics Amazon uses to monopolize e-commerce.** Separating Amazon’s third-party marketplace from its own retail division and spinning off its logistics operation to form several stand-alone companies would remove Amazon’s ability to exploit the interplay between its major divisions to impede competition. Indeed, all of Amazon’s anticompetitive tactics rely on leveraging the ways these different divisions intersect. Rather than attempt to monitor and police its behavior going forward, a simpler, more effective, and less heavy-handed approach would be for the court to order a breakup.

→ **As separate companies, each of Amazon’s divisions would have to compete on the merits.** Its package delivery operation would need to vie with other carriers, rather than simply strong-arming sellers. Its retail spin-off would no longer be able to mine sellers’ data to inform its own products or tax their sales to subsidize its own operations. And its marketplace platform would face much needed competition from other shopping sites offering lower fees and better service to attract both sellers and consumers.



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What will change if the FTC's case succeeds?

→ **Amazon will face growing competition — and that will be a boon to consumers.** If the FTC succeeds in stopping Amazon from using illegal tactics to monopolize e-commerce, Amazon will face growing competition from other online retailers and platforms, including new entrants. This will create options for shoppers, opening the way for competing sites and marketplaces to offer different approaches, more innovation, and a better shopping experience.

→ **Competition will compel Amazon to continuously improve, rather than degrade, how well it serves consumers.** Absent competition, Amazon has steadily **degraded its search algorithm**, steering shoppers to products that generate higher returns for Amazon, rather than those best-matched to a customer's needs. It's also failed to rid its site of fraudulent and even harmful products. Ending Amazon's monopolization of e-commerce would force it to compete for customers, disciplining its bad behavior and recklessness.

→ **Competition will benefit independent businesses selling online by creating options for sellers and putting an end to Amazon's longstanding abuses.** Hosting a marketplace is the **most profitable part of Amazon's business**. If this case results in a breakup of the company, Amazon Marketplace will continue to operate successfully as a stand-alone entity. What will change is that other marketplaces will emerge, giving sellers options. This newfound ability to sell elsewhere will put pressure on Amazon Marketplace to end its abusive practices and be more responsive to sellers, including by reducing its sky-high fees.

→ **Breaking Amazon's monopoly grip will lead to lower prices across the web.** As noted above, Amazon effectively prohibits sellers from offering their products at lower prices on other sites. If the government succeeds in persuading the court that this tactic is illegal, sellers will be able to reduce their prices on other platforms whose fees are lower than Amazon's. This will open the way for real competition and put pressure on Amazon to cut its own fees, ultimately leading to lower consumer prices across the web.

→ **Breaking up Amazon would help protect the ideas and intellectual property of independent businesses.** Multiple investigations have found that Amazon has used seller data to identify popular products, rip off those ideas, and sell its own versions. By separating Amazon's retail business from its third-party marketplace, independent brands and retailers can ensure that their data and market insights remain safe from Amazon's spying.

→ **Amazon will no longer be able to compel sellers to use its fulfillment service, opening the way for competition in package delivery, to the benefit of sellers, consumers, and, importantly, workers.** The FTC's case aims to stop Amazon from tying its online marketplace to its fulfillment service. If the case leads to a spin-off of Fulfillment By Amazon into a separate company, it would expose FBA to competition, ensuring that other carriers have a chance to compete and that businesses can choose the carrier that best meets their needs. Workers would benefit. UPS and USPS would be able to win more business from online sellers, expanding their unionized workforces and putting pressure on FBA to increase pay and benefits.

David can take on Goliath.

This case represents a major victory for small businesses, working people, and citizens. The resistance to Amazon's dominance began years ago when researchers, organizers, and everyday people started **speaking out** and **demanding** that elected officials and regulators take action to check Amazon's outsized power and stop its many abuses. **Join us** in the fight to rebuild our communities and safeguard our democracy! ■

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